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NO. 1197
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

EDWARD P. BENTLEY,
APPELLANT-PETITIONER

v.

STATE OF NEW HAMPSHIRE
APPELLEE-RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Neither the opinion of the District Court, dated September 5, 1968 (A.,6), nor the opinion of the United States Court of Appeals for the First Circuit, dated January 27, 1969 (A.,7) has been reported.

JURISDICTION

Petitioner has failed to set out jurisdictional requisites to the granting of his petition for certiorari, in that:

1. As will appear below, this petition arises out of petitioner's request for removal under 28 U.S.C. §1443(1) of state court criminal actions charging offenses under motor vehicle licensing and registration statutes;

2. The time within which a petition for certiorari in such a case must be filed is governed by Rule 22 of this Court, being 30 days from entry of judgment in a court of appeals;

3. The judgment of the Court of Appeals for the First Circuit was entered January 27, 1969 and order denying petition for rehearing was entered on February 20, 1969.

4. The petition for certiori was filed March 24, 1969;

THEREFORE, it appears that petitioner's application for a writ of certiorari is out of time and should be denied.

STATUTE INVOLVED

62 Stat 938, 28 U.S.C. §1443(1).

QUESTION PRESENTED

Whether a state prosecution of petitioner for failure to comply with state motor vehicle licensing and registration requirements will constitute or necessarily result in a denial to him of any rights deserved from any statute of the United States of America providing for equal treatment in terms of racial equality of all citizens or inhabitants of the United States, so as to entitle petitioner to remove such prosecutions to a District Court of the United States.

STATEMENT

As appears from the opinion of the United States District Court for the District of New Hampshire (This A.,8);* on two separate occasions petitioner was charged in the local district court of Exeter, New Hampshire,

*Due to the inaccuracy of the reproduction of the District Court opinion as set out in the appendix to the petition (A ,6-7), that opinion is set out in an appendix hereto and cited as "This A., ."

with operating a motor vehicle without proper registration and with operating a motor vehicle without a valid operator's license. Defendant petitioned the United States District Court for the District of New Hampshire for removal of the prosecutions against him, citing as authority for such removal 28 U.S.C.A. §1443(1). Following a hearing the District Court denied the petition finding " . . . that 28 U.S.C. §1443 (Civil Rights Act) does not apply to this type of case." (This A.,12). Subsequently, on appeal, the United States Court of Appeals for the First Circuit observed that "while, unfortunately, the defendant's apparent misunderstanding of the law is such that we may not be able to satisfy him that he is laboring under serious misapprehension, we do observe this to be the fact." (A., 8).

ARGUMENT

Before reference can be made to Rule 19

of this Court, setting out considerations relevant in considering the petition for certiorari, the State invokes the provisions of Rule 23(4) in submitting that petitioner's lack of clarity in presenting points which must be considered for proper disposition of his case militates against granting his present petition. While petitioner's brief (at p. 2) raises questions of "'direct jury' trial" and "failure . . . to provide adequate and simple remedies to protect [him] against the accumulation of 'multiple offense' charges . . .", the only issue which the course of his litigation in the federal courts presents is his right to remove prosecutions for motor vehicle offenses to a United States District Court under 28 U.S.C. §1443(1).

The considerations governing removal under the cited section received a lengthy

historical and analytical review of the majority opinion of this Court in Georgia v. Rachel, 384 U.S. 780, 16 L. Ed.2d 925, 86 Sup. Ct. 1783 (1966). That opinion made clear that to qualify his prosecution for removal under 28 U.S.C. §1443(1), a petitioner must in the first instance claim that the success of the prosecution, or the prosecution itself, would constitute a conflict with the provisions of a statute of the United States extending on grounds of racial equality a specific civil right to all citizens or inhabitants of the United States.

It is perhaps significant to note at this juncture that the petition, which seems to go to the merits of petitioner's position, makes no claim that any such conflict with a civil rights statute is, or can be, involved in the prosecutions which he has sought to remove. Taking the petition on its face, no occasion for ascribing error to the courts below may be inferred.

More to the point, the petition claims no conflict among courts of appeal since the decision in Georgia v. Rachel, supra. The State submits no conflict exists and is at a loss to recognize any further basis, in terms of Rule 19(1)(b) or otherwise, upon which the petition for certiorari might be urged.

CONCLUSION

For the foregoing reasons, and that set out under "jurisdiction," above, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

The State of New Hampshire

George S. Pappagianis
Attorney General

and

David H. Souter
Assistant Attorney General
Counsel for Respondent

April 21, 1969

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

State of New Hampshire

v. Civil Action No. 2838

Edward P. Bentley

RULING ON STATE OF NEW HAMPSHIRE'S MOTION TO DISMISS PETITION FOR REMOVAL

The motion to dismiss the Petition for Removal is granted and the case is remanded to the District Court for Exeter in the County of Rockingham and State of New Hampshire.

The Petitioner was charged in the Exeter District Court, County of Rockingham and State of New Hampshire, with two offenses: (1) Operating a motor vehicle without registration in violation of RSA 260:12; and (2) Operating a motor vehicle without an operator's license in violation of RSA 261:1. Based upon statements made by counsel at the hearing on September 3rd in the United States District Court, it is found that no plea of anykind was entered by the Petitioner in the Exeter Distriet Court; the

Petitioner informing the District Court Judge that he was going to petition for removal to the United States Federal District Court.

The Petitioner bases his Petition for Removal on four grounds:

(1) Denial of his constitutional right to a jury trial in the Exeter District Court;

(2) Failure of the Exeter District Court to protect the rights of the defendant pending a decision on the merits in that Court. In this connection, the Petitioner alleges that he was, in fact, threatened with summons after summons by the police on the same two charges;

(3) Failure by the State of New Hampshire to afford to the defendant, and consequently to his sons, equal protection of the laws guaranteed to him under the Federal Constitution. It is the claim of the defendant that he has had to leave New Hampshire in order to avoid police harassment; and

(4) Denial of the Petitioner's civil rights resulting in a violation of 28 U.S.C.A. § 1443 (Civil Rights Act).

Under New Hampshire law, the defendant has an absolute right to a jury trial and trial de novo in the New Hampshire Superior Court if the District Court of Exeter finds him guilty of the offenses with which he is charged.

The Petitioner argues strenuously that his constitutional right to a jury trial includes the right to a jury trial in the District Court. This Court can find no authority for such a position. The most recent United States Supreme Court case on this subject, Duncan v. Louisiana, 391 U.S. 145, holds only that a person is entitled to a jury trial in state criminal prosecutions where a sentence as long as two years may be imposed without a jury trial at all. It is important to point out that in the State of New Hampshire, the defendant in a criminal case is entitled to a jury trial in any type of a case, including a misdemeanor, and specifically including a traffic violation

or license violation upon appeal to the Superior Court after an adverse finding in the District Court. Under these circumstances, it is hard for the Court to understand the Petitioner's argument that his right to a jury trial under the Fourteenth Amendment has been denied him in the State of New Hampshire.

There is no evidence on which this Court can make any finding that the rights of the Petitioner were either abused or not protected by the State of New Hampshire. The Petitioner, in argument, made some statements as to what the District Judge said in regard to a series of charges pertaining to the same offense. Even assuming that Petitioner's statement relative to the statements of the District Court Judge were true, there was no attempt by the Petitioner to correct any of the alleged deficiencies in the administration of justice in the District Court for Exeter in the County

of Rockingham. There has been no showing at all that the defendant or his family have been denied the equal protection of the laws by the State of New Hampshire.

This Court finds and rules that 28 U.S.C.A. § 1443 (Civil Rights Act) does not apply to this type of case.

Hugh H. Bownes
United States District Judge

September 5, 1968